

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

No. 96-4504

CARLTON C. SHANNON,
Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Florence.
C. Weston Houck, Chief District Judge.
(CR-95-230)

Submitted: April 8, 1997

Decided: April 24, 1997

Before MURNAGHAN and LUTTIG, Circuit Judges, and
PHILLIPS, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

G. Wells Dickson, Jr., LAW OFFICES OF G. WELLS DICKSON,
JR., Kingstree, South Carolina, for Appellant. Alfred William
Walker
Bethea, Assistant United States Attorney, Florence, South Carolina,
for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Pursuant to a guilty plea, Carlton C. Shannon was convicted of one count of conspiracy to possess with intent to distribute and to distribute marijuana in violation of 21 U.S.C. § 846 (1994) and 18 U.S.C. § 2 (1994). Shannon's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), challenging whether the district court erred in denying Shannon's motion for a downward departure from the Sentencing Guidelines* based on reduced mental capacity. Finding no error, we affirm.

Shannon was a member of a loosely-knit conspiracy which distributed marijuana in the Myrtle Beach, South Carolina, area, and he was apprehended during a sting operation after he agreed to sell twenty pounds of marijuana to a Government informant. Prior to sentencing, Shannon made a motion for downward departure due to his reduced mental capacity at the time of the offenses, claiming that he was suffering from post-traumatic stress disorder caused by his service as an infantryman in Vietnam. After hearing evidence from both sides, the district court denied the motion.

Where the district court recognizes that it has the authority to grant a motion for downward departure, its refusal to do so is not reviewable. United States v. Bayerle, 898 F.2d 28, 29-31 (4th Cir. 1990). We have examined the entire record in this case in accordance with the requirements of Anders, and find no meritorious issues for appeal. The court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may

*United States Sentencing Commission, Guidelines Manual (Nov. 1995).

move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

We affirm the district court's judgment order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED